

**Testimony of Kevin J. Kennedy  
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**Senate Committee on Elections and Urban Affairs**

**March 5, 2014**

**Room 201 Southeast, State Capitol  
Public Hearing**

**Senate Bills 654, 655  
Assembly Bill 202**

Chairperson Lazich and Committee Members:

Thank you for the opportunity to comment on the bills before you today. I am appearing here for information purposes and to answer any questions you or Committee members may have. The Government Accountability Board has not taken a position on this legislation.

**2013 Senate Bill 654**

This legislation incorporates the provisions of the Government Accountability Board (G.A.B.) rule, GAB 1.28, defining the scope of regulated activity with respect to political communications as currently applied by the G.A.B. The legislation, like the rule, sets out specific terms or their functional equivalents that trigger registration and reporting by individuals or organizations. Regulation would apply to communications using the “magic words” or the functional equivalent advocating the election or defeat of a clearly identified candidate that unambiguously relates to the campaign of that candidate. This applies the objective standard established in *FEC v. Wisconsin Right to Life (WRTL II)*, 551 U.S. 449 (2007).

**2013 Senate Bill 655**

This legislation makes several changes to campaign finance law. Some have been requested by the G.A.B. It is important for the Committee to understand the practical impacts of these changes. My comments are offered for your consideration to improve the legislation.

### *Internet Political Activity; Individual and Public Communications*

This bill would exempt volunteer Internet campaign activity from campaign finance regulation. This includes the costs of an individual acting on their own behalf engaging in internet campaign activity such as Facebook postings, tweeting, blogging or YouTube videos. The legislation also codifies the position articulated by the G.A.B. based on current law that volunteer activity on behalf of a campaign including Internet activity does not need to be reported as a contribution or disbursement.

### *Solicitation Expenditure Limit*

This bill would eliminate the current \$500 limit on expenditures made to solicit contributions by corporations or cooperatives to a segregated fund (PAC) or conduit. Due mostly to the cost of postage, the current \$500 limit may be somewhat impractical. However, solicitation costs would still be subject to reporting requirements.

### *Committee Transfers*

Current law limits the contributions that a candidate committee receives from all committees including political party and legislative campaign committees to 65 percent of the applicable disbursement level, and limits contributions from other committees to 45 percent of the applicable disbursement level. Senate Bill 655 modifies these limitations to exclude transfers from any personal campaign committee to another personal campaign committee from the 65 percent threshold and includes these transfers under the 45 percent threshold.

Changing what committees are included in the 65 percent limit is a significant deviation from current practices, which will make it difficult for committees to track both the 45 and 65 percent limits. Currently, everything in the 45 percent limit is included in the 65 percent limit. Now committees will have to compute the 45 and 65 percent limit separately - the 45 percent limit will include transfers from candidate committees and the 65 percent limit will not. The 45 and 65 limits are the most difficult limits for committees to understand and compute. This change will only add to the confusion about these limits, and create extra work for committees.

It is my understanding that the goal of the legislation was the opposite, to include transfers between candidate committees in the 65% limit, but not in the 45% limit. This is a much more workable solution because it treats candidate committee transfers like contributions for political party committees.

### *Electronic Filing*

Senate Bill 655 would eliminate the requirement that those registrants who file electronically also have to file a paper copy of their report. The G.A.B. supports this provision. The legislation also requires the G.A.B.'s electronic filing software to enable an electronic signature consistent with statutory provisions for electronic signatures. Our CFIS application currently has this capability and will be able to modify the application to accommodate this requirement. The G.A.B. could easily accommodate this by displaying the printed name of the user who signed the report. The bill would still allow filers to submit a paper copy of the signature portion of their report to the G.A.B.

### *Registration*

Under Senate Bill 655, the threshold for registration of referendum activity by groups and individuals would increase from \$750 to \$2,500. The G.A.B. recommended this change because of federal court decisions that have held the current limit is unconstitutional.

The threshold for committees to register would increase from \$25 to \$500. The threshold for individuals other than a candidate or the candidate's agent to register would increase from \$25 to \$1,000. There is some inconsistency between the \$500 limit for a group of people than the \$1,000 limit for individuals. A consistent limit for both individuals and groups would likely reduce confusion and for simplified administration.

This will also have a significant impact on local campaigns by limiting disclosure of independent activity. For example in a recent mayoral contest in Franklin, an organization distributed flyers advocating the defeat of a mayoral candidate. The cost of those flyers was approximately \$300. Under this provision, no information about the organization and its sources of income would be known by voters.

I recommend that the \$25 threshold be raised to \$250 for individuals and committees. These groups would most likely be making independent expenditures. The \$250 threshold ensures the public knows the source of expenditures that could significantly impact election contests, particularly if more than one committee or individual is making disbursements at this level.

### *Campaign Finance Reporting*

Senate Bill 655 would extend the time for reporting late campaign activity from 24 hours to 48 hours. Late campaign activity means certain large contributions or independent disbursements made within 15 days of a primary or election. This includes any independent disbursements by a committee or individual totaling \$20 or more, or contributions totaling \$500 or more to a candidate or committee. The 48-hour

requirement would be consistent with Federal Election Commission standards, though a 24-hour requirement is still quite reasonable given our electronic filing system.

#### *Conduits; Redirection of Certain Unclaimed Contributions*

This bill would allow conduits to redirect unclaimed contributions made to the conduit after a two-year period, after having made at least 10 attempts to contact the contributor, or receive authorization from a deceased contributor's surviving spouse or estate executor. The bill also requires the conduit to report this activity on their financial report. This would require a technical change to the Campaign Finance Information System (CFIS) to allow committees to report transfers to their administrative fund.

#### *Campaign Contributions by Lobbyists*

Senate Bill 655 would allow a lobbyist to furnish a campaign contribution at any time to an official, employee, candidate, or committee. The bill still prohibits a lobbyist from personally making a campaign contribution outside of the permitted period. This bill would also extend the period where lobbyists may make a campaign contribution to between the first day candidates can circulate nomination papers and the day of the election or special election. The bill would not affect the prohibition on contributions from lobbyists if the legislature has not completed its final floor period, or if there was a special or extraordinary session.

The change to permit a lobbyist's contribution in a special election addresses a longstanding concern. However, changing the June 1 date to April 15 for partisan candidates in the even-numbered year creates administrative issues given the Legislature is often in session or has not concluded its final floor period between April 15 and June 1 of an even-numbered year. The June 1 date coincides with the filing deadline for candidates for the Fall partisan elections.

While the exception to permitting a lobbyist to furnish anything of pecuniary value is limited to collecting and delivering campaign contributions from others, it represents a significant departure from the long standing policy of limiting the influence of lobbyists during the legislative session.

#### **2013 Assembly Bill 202**

This legislation would put specific requirements regarding designated areas for election observers into state statutes. The legislation will also require observers to print their names, sign and date a log maintained by the poll workers.

Currently, the chief inspector or municipal clerk is required to designate areas within the polling place, alternate absentee voting site, or municipal office from which members of the public may observe all public aspects of the voting process. However, statutes are currently silent on the distance of that observation area from the table where voters announce their name and address to be issued a voter number and the table where a person may register to vote.

In 2008, the Government Accountability Board promulgated Emergency Rule GAB 4 regarding election observers, and these emergency rules were revised and restated in 2010. While those rules expired before the 2012 General Election, the Board intends to promulgate identical provisions as permanent rules in the future, and has advised local election officials to continue applying the 2010 rules at polling places. These rules were the product of task force developed by the former State Elections Board consisting of local election officials, representatives of the two major political parties and other groups that observe elections.

The rule states:

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. Election inspectors shall also inform observers at the time that absentee ballots are inserted into ballot boxes or tabulating equipment.

The original version of this bill required the chief inspector and the municipal clerk to designate an observation area for election observers that is within three feet of the table at which electors announce their name and address to be issued a voter number and within three feet of the table at which a person may register to vote. It also said the chief inspector or municipal clerk may permit an election observer to sit at either table, provided the observer is not permitted to observe confidential information.

The amended version of the bill provides that designated observation areas must be “not less than 3 feet from nor more than 8 feet from” the tables. It no longer says observers may be permitted to sit at the table. These are significant improvements over the original legislation. The challenge in accommodating observers is finding the appropriate balance among the public right of observation, election officials need to conduct voting in a orderly and efficient manner along with the ability of voters participate in elections without being hassled or harassed by observers.

The three foot provisions may be impractical in most polling places. In some voting locations even eight feet may not work. This is why we included language “when physically feasible” in our guidelines for the 6 to twelve foot distance. I am sure you will hear concerns about the need for flexibility for election officials, but you will also hear of observer experiences where they were positioned in manner that made the observation process impossible.

### **Conclusion**

Thank you for the opportunity to share my thoughts with you. I hope this testimony will help inform the Legislature’s consideration of these bills. As always, we are available to answer questions and work with you in developing proposed legislation.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

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